

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CALVIN RAY ALLEN

Petitioner,

v.

NATHANIEL QUARTERMAN, Director
Texas Department of Criminal
Justice, Institutional Division,

Respondent.

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CIVIL ACTION NO.
3:06-CV-0041-P

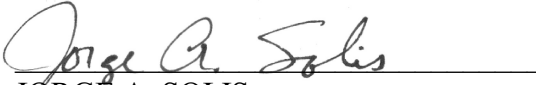
ORDER

This is a petition for writ of habeas corpus filed by a state inmate pursuant to 28 U.S.C. § 2254. The magistrate judge filed his Findings, Conclusions and Recommendation on March 19, 2007, and petitioner filed his objections on April 2, 2007. The magistrate judge concluded that some of petitioner's claims were procedurally barred for failure to raise the claims in a Petition for Discretionary Review ("PDR") with the Texas Court of Criminal Appeals or in his state application for habeas corpus. Petitioner responds in his objections that the reason he did not raise the claims in a PDR was due to ineffective assistance of appellate counsel. However, on April 28, 2006, in this case, petitioner filed a motion to amend his complaint in response to Respondent's Answer seeking denial of certain claims as procedurally barred for failure to exhaust state court remedies. In his motion to amend, petitioner conceded his failure to exhaust certain claims and requested that he be allowed to amend his petition to omit the unexhausted claims. Petitioner's motion to amend did not make any claim that his failure to exhaust was due to ineffective of counsel. The magistrate judge granted petitioner's motion by order of May 10,

2006. Petitioner now states in his objections that appellate counsel failed to inform him that petitioner could file a PDR. However, in his motion to amend, petitioner stated he attempted to file a PDR. Petitioner further stated that although he filed several motions for extension of time, the PDR was ultimately untimely. Because petitioner did not raise the issue of ineffective assistance of appellate counsel in his motion to amend, the court finds petitioner has waived that claim.¹ Further, petitioner still does not explain why he failed to raise these claims in his state habeas application. Thus, the magistrate judge properly concluded that those claims are procedurally barred. Petitioner's objections to the magistrate judge's order concerning the procedural bar issue are overruled.

The court has reviewed the remaining objections by petitioner and finds they are without merit. Those objections are also overruled. The court adopts the Findings, Conclusions and Recommendation of the magistrate judge as the findings and conclusions of the court.

Signed this 9th day of April 2007.


JÓRGE A. SOLIS
UNITED STATES DISTRICT JUDGE

¹ Additionally, because petitioner did not raise this new claim of ineffective assistance of appellate counsel in his state habeas application, that claim would also be procedurally barred from consideration by this court.